SUPREME COURT, U. S.

FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-224

ROBERT M. ROSE, M.D., DORIS D. ROSE,
Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for
The Fifth Circuit

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION MEMORANDUM

ROBERT M. ROSE, M. D.
4440 Magnolia Street
New Orleans, Louisiana 70115
PRO SE

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October Term, 1973

No. 73-224

Robert M. Rose, M.D.
Doris D. Rose,
Petitioners

v.

Commissioner of Internal Revenue,
Respondent

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REPLY TO RESPONDENT'S OPPOSITION MEMORANDUM

Respondent's Memorandum in Opposition completely disregards that this suit is for the recovery of the Income Taxes for 1967, 1968 and 1969, demanded by the Commissioner and paid by Petitioner, as stated in the first paragraph of Statement of the Case, p. 11 of Petitioner's Petition for Certiorari.

This suit was not brought into the United States District Court for decision regarding tax liability for 1964, as stated by Respondent.

Petitioner's suit before the District Court was based on a point of law that had never been adjudicated by any court, viz., that the Commissioner of Internal Revenue had altered the wording and meaning of Congress' expressed intent in forming his regulations, denying Petitioner's deductions.

Petitioner's suit was also based on the facts of his daughter's illness during 1967, 1968 and 1969, which facts had never been reviewed by any Court, which facts were not the same as the facts of her illness during 1964, and which facts were not at all as had been fraudulently "found" by the Tax Court for 1964, and fraudulently averred by that Court as having been stipulated, when they had not been.

Maintaining Suzanne in Arizona and in Florida during 1967, 1968 and 1969, climatological treatment, was the only remaining treatment of her illness after all other treatments had failed, averted her impending death, and saved her life.

The Tax Court, in its decision concerning Petitioner's daughter's illness during 1964, not only found a false and, therefore, fraudulent account of her illness during 1964, but fitted their fraudulent account of her illness into the mold of Bilder (Comm. v. Bilder 369 U.S. 497(1962)) and made decision adverse to Petitioner under the rule of Bilder, when, in fact, the Bilder menage's yearly sojourn to Fort Lauderdale for three months of each year were by no means the only remaining treatment of Bilder's illness, after all other treatment had failed.

All appeal for correction of that Tax Court's fraud had been unsuccessful so Petitioner, in

this suit concerning taxes on his daughter's continuing illness during 1967, 1968 and 1969, also had to file for permanent injunction against any further proceeding or exaction against him, based on the other case fraudulently "found", and fraudulently averred as having been stipulated, by the Tax Court for 1964, to prevent the fraudulent "findings" of the 1964 Tax Court being applied to the current suit under the principle of "res judicata", and in protest against that illegal proceeding.

Appeal for permanent injunction is Petitioner's legal right after all other legal paths have been exhausted, and can be made only after all other legal paths have been exhausted. Jurisdiction of the District Court over this injunction is under 28 U.S.C. Sec. 1346(a)(1) and is not barred by 26 U.S.C. Sec. 7421, since fraud "illegality" and "exceptional and extraordinary circumstances" clearly existed. Miller v. Standard Nut Margarine Co. (1932) 284 U.S. 498, 52 S.Ct. 260, 76 L ed 422, and Lassoff v. Gray (C.A. 6th, 1959) 266 F2d 745, 747.

Throughout the course of these proceedings, Petitioner has repeatedly protested the Tax Court's frauds, and that he has been "prevented by fraud ** from fully presenting his case", so, the relief which Petitioner requests, is fully justified under the very authorities that the Solicitor General cites, United States v. Throckmorton, 98 U.S. 61; Kenner v Commissioner, 387 F. 2d 689 (C.A.7). and Respondent, in his Memorandum in Opposition concedes that "a collateral attack may be maintained * where extrinsic fraud is shown, i.e., where an unsuccessful litigant has been prevented by fraud or deception from fully presenting his case."

The District Court violated the mandate of F.R.C.P. Rule 56(e) by disregarding that the Commissioner had failed to file appropriate response; affirmed the facts of Petitioner's daughter's illness during the years 1967, 1968 and 1969 as having been identical to the facts of her illness during 1964, when sworn affidavits in Petitioner's Motion proved otherwise; disregarded the point of law on which Petitioner's case was based and which had never been passed on by any Court, and ruled Petitioner's case as "moot", thus embracing the harsh and inequitable doctrine that "two wrongs make a right", denying Petitioner fair trial and Due Process as guaranteed to him by the Fifth Amendment to the United States Constitution.

WHEREAS, Petitioner's Petition for Writ of Certiorari contains twenty specific allegations to the frauds of the 1964 Tax Court, on pages 2, 3, 6, 7, 13, 17, 19, 21, 23 and 25, and

WHEREAS, the Memorandum in Opposition to that Petition states in closing on p. 2 that "Petitioner makes no specific allegations of fraud", and from all of the foregoing, it is evidenced that the Memorandum in Opposition to Petitioner's Petition for Certiorari deals with the facts and issues of some other case, not Petitioner's case, and should be stricken from the record, or it it is a barefaced attempt to deceive this Court as to the facts and issues of this case, and should be so regarded.

Respectfully submitted,

Robert M. Rose, M.D., Pro Se
4440 Magnolia Street - Suite #312
New Orleans, Louisiana 70115

Date: _____